

CONTRACT ASSIGNMENT
GROUP 3 SUBMISSION

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QUESTION

“Capacity to enter into a contract is an element of a contract which is capable of rendering the contract void, voidable and or unenforceable.”

Examine the above statement with the aid of decided cases.

INTRODUCTION

Contract law governs the validity of agreements between institutions and private parties within a legal system. The most basic definition of a contract is that it is an agreement which is valid and binding at law, that is, agreements that the courts of law will enforce.¹ Conversely, this means there are agreements that are not legally binding, often due to the absence of some essential elements of a contract or, at times, because of certain defects that may render it invalid.

Beyond these deficiencies, there are specific categories of people who enjoy a special status in contractual transactions and relationships.² A contract may not be enforceable against these sets of people as a form of legal protection, due their circumstances which makes them susceptible to fraud or exploitation in the process of making bargains. This leads us to the concept of contractual capacity.

CONTRACTUAL CAPACITY

Contractual capacity refers to the legal ability or competence of a person or entity to enter into a binding contract.³ It is one of the critical elements of a valid contract alongside offer, acceptance, consideration and the intention to create legal relations. If a party lacks contractual capacity at the time of agreement, the contract may be void, voidable, or unenforceable depending on the circumstances. This is done to protect certain categories of people, including illiterates, infants, intoxicated persons, and those of unsound mind (lunatics), as they may lack the capacity to fully understand or commit to contractual obligations.

The legal basis and importance of this doctrine is the fact that in contract law, all parties to a contract must have the mental ability and legal standing to understand the nature and consequences of the contract they are entering into as it affects their legal rights and duties. This requirement serves to shield vulnerable groups, ensures that no party is exploited, deceived, or forced into a contract they do not fully understand or are legally not allowed to enter.

¹ I.E Sagay *"Nigerian Law of Contract"*, 3rd ed. (Sweet & Maxwell: London, 1985) P 1

² Ibid

³ Olga Asheyichik "Contractual Capacity – A Part of the Contract Management Process You Shouldn't Overlook" available at <https://www.pandadoc.com/blog/contractual-capacity/> accessed 2025

Those who have the capacity to enter a contract include adults age of majority – In most jurisdictions, the age of majority is 18 years but as settled in **Labinjoh V. Abake**,⁴ it is 21 years in Nigeria. Once a person reaches this age, they are presumed to have full capacity to enter a contractual transaction. It also includes literates who fully understand the terms of a contract, and those who have sound mind, which has not been altered due to insanity or drunkenness. In addition, corporations, companies can have contractual capacity through their authorized representatives or officials. Therefore, this essay seeks to examine the extent to which the capacity of various persons (illiterate, infant, lunatic and drunken persons) and establishments (corporations) is capable of rendering a contract void, voidable or unenforceable.

Capacity of an illiterate

In understanding the capacity of an illiterate, It's imperative to understand what the meaning of an illiterate entails. An illiterate, in the context of contract law, refers to someone who cannot read or write in the language in which the contract is written. As defined in **P.Z & Co Ltd v. Gusau and Kantoma**,⁵ an illiterate person refers to a person who is unable to read the document in the language in which it was written

Also, as expressed, in **SCOA Zara V. Okon**,⁶ a person may be capable of signing his name and reading figures but may not be literate enough to understand the effects of the document he is signing. As such, when issues of illiteracy arises, the law seeks to offer special protection to the illiterate party in order to prevent exploitation. The primary legislation safeguarding the rights of illiterates is the **Illiterates Protection Act (IPA)**.⁷ As provided under **Section 3 of the IPA**, The Illiterate Protection Act in **Sec. 3**, lays down certain duties which the writer of any document made on behalf of an illiterate person must comply with:

- *Write his name and address on the document: to show that he was instructed to write the document and that it represents the intention of the illiterate.*

⁴ (1924) 5 N.L.R. 33.

⁵ (1961) N.R.N.L.R. 1

⁶ (1960) N.R.N.L.R. 34

⁷ Cap.83, Laws of the Federation of Nigeria (1958)

- *Ensure that the document is read over and explained to the illiterate person before he signs and that the signature or mark was made by the illiterate.*

Also, **Sec. 8 of the Land Instruments Registration Law**⁸ provides that no instruments, wherein one of the grantors is an illiterate, shall be registered unless it has been executed by such illiterate grantor(s) in the presence of a Magistrate or a Justice of Peace as a witness thereto.

Failure to comply with the provision of the Laws could result in effects such as; making the contract illegal, void, voidable, or unenforceable. In **UAC V. Edem & anor**,⁹ the plaintiff's action against the defendant/guarantor for the debt of one of their customers failed because the defendant pleaded illiteracy and the plaintiff's clerk who was held to be the writer of the document failed to comply with the requirements of the law. The court held the guarantee null, void and unenforceable against the defendant. This is because once it is established that a party to the contract is illiterate, the presumption is that he has no capacity to understand the terms of the contract. The only way to rebut this is to show that the writer explained the terms contained in the document to the understanding of the illiterate party – see **Osefor V. Uwania**.¹⁰

However, it should be noted that though the law seeks to protect illiterate parties from being exploited, defrauded, or oppressed in a contract, “it does not(...)provides him with a weapon to cheat others.”¹¹ Thus, if in a contract, a party who understood the terms of a contract decides to use the plea of illiteracy to evade his obligations to such contract, he would be denied the protection of law. In **Lawal v. G.B. Ollivant (Nigeria) Ltd**,¹² the court, having concluded that the plaintiff understood what he was doing, held that the plaintiff is outside the protection of law.

CAPACITY OF AN INFANT

In contract law, “infants” does not necessarily connote babies. It refers to minors, that is, persons who are below the age of majority. The contractual age in Nigeria, which is governed by English law, is 21 years.¹³ Thus, contracts involving minors, in this case, infants, are treated differently

⁸ Cap. 56, Laws of Western Nigeria (1959)

⁹ (1958) N.R.L.R. 33.

¹⁰ 1971 1 A.L.R. 421

¹¹ **Lawal v. G.B. Ollivant (Nigeria) Ltd** 1970 2 A.L.R. 208

¹² 1970 2 A.L.R. 208

¹³ I.E Sagay “Nigerian Law of Contract”, 3rd ed. (Sweet & Maxwell: London, 1985) P 399

from those involving adults due to concerns about their capacity to understand the effects of contractual relations. Historically, some had argued for the application of customary law in the determination of contractual age (i.e where adulthood begins at puberty, around 12-14 years), however, this position was rejected in **Labinjoh v. Abake** – a case which has ever since, settled the issue of contractual age in Nigeria.

The defendant, who was 18, bought goods on credit for trading purposes. She refused to pay as agreed under the contract and the plaintiff brought an action to recover the amount owed. The defendant pleaded infancy and relied on the owed. The defendant pleaded infancy and relied on the **Infants Relief Act 1874**¹⁴ which made a contract to supply goods for trading purposes to an infant void. The court held the contract void and unenforceable as the defendant was below 21 years.

Generally, there are three categories of contracts in which an infant can enter. These categories include those contracts; that are binding, that are voidable and those that are absolutely void.¹⁵ In terms of those that are binding, they include contracts for necessities and beneficial contracts of service. The supply of necessities provides an exception to the general rule that infants cannot be held liable to their contracts. This doctrine recognizes that infants must be able to obtain goods and services important to their welfare, and that suppliers of such necessities should be able to recover compensation for what they provide.

The concept of necessities has been developed through case laws and covers both necessary goods such as food, clothing, shelter, and medical care. The legal test for determining what constitutes necessities involves two stages that reflect the courts' careful approach to balancing protection with practicality. The first stage requires an objective assessment of whether the goods or services in question are capable of being necessities for an infant in the defendant's particular position and circumstances. This objective test considers factors such as the infant's social status, educational background, and general life circumstances to determine whether the goods or services could reasonably be considered necessary for someone in that position.

¹⁴ Infant Relief Act, 1874

¹⁵ I.E Sagay "Nigerian Law of Contract", 3rd ed. (Sweet & Maxwell: London, 1985) PP 401-402

The second stage involves a subjective examination of whether the infant actually needed the goods or services at the time of the contract and delivery. This subjective test is crucial because it prevents suppliers from recovering goods or services that, while they can be said to be suitable to the infant's station in life, were not actually required because the infant was already adequately supplied with such necessities. These approaches ensure that the intended purpose of enabling infants to obtain what they genuinely need while preventing exploitation through the supply of unnecessary luxury are achieved.

In **Nash v. Inman**,¹⁶ a case which involved the plaintiff's attempt to recover payment for clothing, including eleven fancy waistcoats, supplied to a Cambridge undergraduate. The Court of Appeal's decision in this case established crucial principles that continue to govern contract law today. In **Nash v Inman**, an undergraduate infant obtained expensive clothes from the plaintiff which included eleven fancy waistcoats. The defendant did not pay and the plaintiff sued. It was established that the waistcoats were not necessities even though they were appropriate to the infant's status in life. The court held that, where an infant already had enough fancy waistcoats, more cannot be necessary. Note that where the goods are necessities, the infant is protected as he is expected to pay a reasonable price as provided for in **Sec. 3 of the Sales of Goods Act**.¹⁷

Furthermore, it's important to note that a contract is not binding on an infant merely because it is proved to be for the infant's benefit. A contract which would have been binding as a contract for necessities may be voided if it contains harsh and onerous terms. Also, an infant's wife has authority to pledge her husband's credit for necessities. This is because necessities for an infant's immediate family are viewed as necessities for the infant – *see Chapple v Cooper*.¹⁸

In terms of a contract of beneficial services, the contract is binding on the infant. It refers to the type of contract wherein he receives training or instruction for his future career. These forms of

¹⁶ (1908)2 K.B. 1

¹⁷ s.3 of Sales of Goods Law, West

¹⁸ (1844) 13 M & W 253

contract are necessary and beneficial to the infant. What the court considers in determining the plausibility and validity of contracts of service is the benefit element of the contract. It must be substantially to the infant's advantage and benefit. Any part of the contract that is meant to exploit the inexperience of the infant is not binding. Thus, in **Doyle v. White City Stadium**,¹⁹ where the court considered a professional boxing contract entered into by an infant. Despite the contract being related to the infant's profession, the court held that it was not binding because its terms were not substantially for the infant's benefit.

Now, for voidable contracts, they are valid and enforceable only at the option of the party whom the law seeks to protect. Thus where an infant enters into a contract of this nature, it is binding but the law allows him to void it and refuse to honour his obligations. The general rule regarding this is that such contracts are valid and binding on the infant unless and until they are repudiated any time within infancy or within a reasonable time thereafter. Examples of this are where he acquires interest of a permanent nature in property such as leaseholds, shares in a company, partnership or marriage settlement to which continuing obligations attach — *see Steinberg v. Scala Ltd.*²⁰

The last category involves contracts that are void ab initio when entered into by an infant. This is as provided for in **SEC. 1 of the Infant Relief Act 1874**. The contracts include; Contracts for the payment of money lent or to be lent, contracts for goods supplied or to be supplied which are not necessities, and accounts stated – that is an admission of debt or I.O.U.

CAPACITY OF A LUNATIC

As said from the foregoing, for a contract to exist, both parties must have the capacity to understand what he or she is entering into and in this case, lunatic is no exception. According to the **Black's Law Dictionary**, a lunatic refers to a person of deranged or unsound mind.²¹ This is, a person whose mental faculties are in the condition called lunacy – the impairment of the mind's faculties. This section will delve into the contractual capacity of a lunatic; those contracts that are void or voidable at his instance.

¹⁹ (1935) 1 K B. 110

²⁰ (1923) 2 Ch. 451

²¹ H.C Black "*Black's Law Dictionary*" 2nd ed. (West Publishing Co. Minnesota 1910)

Generally, contracts concluded by a lunatic or mentally disordered person can be classified into two; contracts for necessities and contracts for any other things. According to **Sec. 2 of the Sales of Goods Act**, necessities means;

“goods suitable to the condition in life of such infants or minor or other persons, and to his actual requirements at the time of sale and delivery.”

Also, according to the **Black's Law Dictionary**, necessities refers to those things that are indispensable, proper and useful for the sustenance of human life. Hence, in such a situation wherein necessities are sold or delivered to a person who, according to **Sec. 2 of the Sales of Goods Act**, suffers from mental incapability and the incompetency to contract, he must pay a “reasonable price” because such contracts are binding on him just like every other person.

However, where the goods are not necessities, the mentally disordered person is also bound by his contract, unless he or she can show that; he did not understand what he or she was doing when the contract was entered as a result of his mental impairment; the other party was aware of his incapability. Thus, the landmark case of **Imperial Loan Co. Ltd V. Stone**,²² presents an instance wherein a party having into a contract that does not deal with necessities, seeks to use lunacy as defence.

The fact of the above case centered around a promissory note signed by a person later found to be of unsound mind. The core issue was whether the defendant's insanity, at the time of signing, rendered the contract (the promissory note) unenforceable due to his incapability to understand the implications of the agreement, and if so, whether the plaintiff's (Imperial Loan Co. Ltd.) knowledge of the defendant's insanity was a necessary element. The court ruled that for the contract to be voidable due to insanity, the defendant needed to prove both their incapacity to understand the contract and the plaintiff's awareness of their unsoundness of mind.

Also, **Stroud V. Marshall**²³ presented an action of debt on an obligation. The defendant pleaded that at the time the obligation was entered into, he was insane. The court of Queen's bench held

²² (1892) 1 Q.B. 599

²³ Columbia Law Review “Nature of the Liability at Law of Necessaries” available at <https://www.jstor.org/stable/1108978?seq=1> accessed 2025

that this was not a good plea, "for he cannot save himself by such a plea" as he was expected to show that his condition prevented him from understanding what he was doing and that the other party was aware of it. In **Cross v. Andrews**, the same Court had occasion to deal with a case where an innkeeper was sued in an action upon the case for failing to keep safely the goods of the plaintiff, a guest. The defendant pleaded that he was insane at the time the plaintiff lodged with him. The court held for the plaintiff. "For the defendant, if he will keep an inn, ought at his peril, to keep safely his guest's goods... and to say he is of non-sane memory, it lieth not in him to disable himself no more than in debt upon an obligation."

Furthermore, contracts entered into by a mentally disordered person during a period known as the lucid period are also binding on him. A lucid period refers to the temporary interval of mental clarity or normalcy during which such a person can understand their actions and also make decisions that are rational such as entering into contract and ratification of earlier contracts. However, it is important to note that if he establishes the fact that he was mentally disordered when he entered the contract, and that the other party was aware of his mental condition, such a contract becomes rather than being void ab initio, voidable at his instance.

CAPACITY OF A DRUNKEN PERSON

The contractual capacity of a person who is intoxicated, that is, a drunken person, is a specific area of contract law that deals with the impact of a temporary mental impairment on the ability to form a rationally binding agreement. The general principle is that a contract entered into by an intoxicated person is voidable at the option of the intoxicated party, but only under specific conditions. Thus, for an intoxicated person to successfully argue that they lacked capacity and as a result, void the contract, two main conditions are generally expected to be met and the include;

Degree of Intoxication: The person must have been so intoxicated at the time of entering the contract that they were incapable of understanding the nature and effect of the transaction or what they were doing.²⁴ The impairment must be significant enough to negate true consent and comprehension.

²⁴ I.E Sagay "Nigerian Law of Contract", 3rd ed. (Sweet & Maxwell: London, 1985) P 411

Other Party's Knowledge: The other contracting party must have been aware or ought to have been aware of the intoxicated person's condition and their inability to understand the contract.²⁵ Thus, as held in **Gore V. Gibson**,²⁶ a contract entered into by a person so intoxicated as not to know the consequences of his act is not binding if he can show that his condition was known to the other person. However, wherein the other party claims ignorance, adopting the objective test i.e the layman reasoning, becomes helpful.

Legal Consequences

Voidable, not Void: This is a crucial distinction. The contract is not automatically invalid. The intoxicated person has the option to affirm or repudiate the contract once they regain sobriety and full understanding. Hence, as held in **Matthews V. Baxter**,²⁷ if a drunken party upon coming to his senses, ratifies the contract, he is bound by it.

Repudiation: To repudiate the contract, the intoxicated person must do so within a reasonable time after regaining sobriety. Delay in repudiation can imply ratification of the contract.

Restitution: If the contract is successfully repudiated, both parties generally must be restored to their original positions (**doctrine of restitution**). This means any money paid or goods transferred must be returned.

Contracts for Necessaries: An important exception exists for "necessaries." If an intoxicated person enters into a contract for goods or services considered necessities (e.g., food, shelter, essential medical care), they are generally obligated to pay a reasonable price for them as spelt out in the **Sales of Goods Act**, even if the other party is aware of his condition or not, or whether or not they lacked full capacity at the time of entering the contract. This is often based on quasi-contractual principles (obligation arising from benefit received) rather than true contractual capacity.”

²⁵ Ibid

²⁶ (1845) 13 M & W 623

²⁷ (1873) L.R 8

CAPACITY OF CORPORATIONS

Just like the capacity possessed by natural persons to enter a contract as treated from the foregoing, corporations possess certain capacity to enter into a contract. The capacity of a corporation to enter into a contract refers to its legal ability to be a party to a contract. In other words, just as individuals must have the mental and legal capacity to contract, so does a corporation. However, because a corporation is an artificial legal person, its capacity is not based on age or mental competence, but rather on the powers granted to it by law and its constitutional documents.

Therefore, once a company has been registered under the **Companies and Allied Matters Act (CAMA)**,²⁸ it becomes a body corporate, that is, a legal person separate and distinct from the individuals who are the members. Thus it can operate like a natural person capable of rights and subject to liabilities. It can sue and be sued in its own name and own property.

However, the artificial nature of the company places some limitations on it. The extent of its powers is limited by the objects as set out in the **Memorandum of Association**. Thus a company cannot enter into a contract outside the powers specified in its memorandum, otherwise, such a contract is **ultra vires** (i.e. beyond the powers) and is thus void. This is in accordance with **S. 39 of CAMA** which states that;

“A company shall not carry on any business not authorized by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act”

In conclusion, capacity is a foundational rule of contract law, essential for ensuring agreements are binding. Its role in contract formation is to safeguard individuals who, due to their circumstances, might be easily exploited, defrauded, or oppressed when making a bargain. Essentially, it guarantees that those unable to contract because they don't fully understand the terms and implications of an agreement have the choice to either ratify or repudiate it when necessary.

²⁸ Companies and Allied Matters Act (CAMA), 1990